

**REMARKS**

By this Amendment, Applicant amends a paragraph of the specification to correct a typographical error. Applicant notes that claims 1-4 were canceled in the Preliminary Amendment filed concurrently with the present application and, therefore, claims 5-11 are pending in this application.

In the Office Action, the Examiner indicated that the Information Disclosure Statement filed December 10, 2004, failed to comply with 37 CFR § 1.98(a)(2) because copies of the non-patent literature were not found; alleged that the Declaration is defective; objected to the disclosure due to a typographical error in the continuation paragraph; rejected claims 1, 3, and 4 under 35 U.S.C. § 101 as claiming the same invention as that of claims 6, 7, 11, and 12 of prior U.S. Patent No. 5,815,718; rejected claim 2 under 35 U.S.C. § 101 as claiming substantially the same invention as that of claims 1-3 of prior U.S. Patent No. 5,815,718; and rejected claims 5-11 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-7 of prior U.S. Patent No. 6,223,346.

In particular, the Examiner indicated that the Information Disclosure Statement filed December 10, 2004, failed to comply with 37 CFR § 1.98(a)(2) because copies of the non-patent literature were not found. Applicant notes that the present application is a continuation of Application Serial No. 09/416,285, in which copies of the non-patent literature were provided. However, Applicant attaches hereto a PTO SB/08 Form for the Examiner's convenience listing the non-patent documents, along with copies of the listed non-patent documents. Applicant requests that the Examiner consider the documents and return the Form with appropriate notations.

The Examiner alleged that the Declaration is defective because it does not state that the person making the Declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR § 1.56. Applicant respectfully traverses the Examiner's requirement for a new Declaration since the Declaration does in fact acknowledge Applicant's duty to disclose. As the Examiner noted, the Declaration cited "§ 1.56(a)" instead of "§ 1.56," however, Applicant respectfully submits that it is paragraph (a) of 37 CFR § 1.56 that sets forth the duty to disclose. The remainder of section 37 CFR § 1.56 further defines "material to patentability" in paragraph (b), defines individuals associated with the filing of a patent application in paragraph (c), indicates how individuals may comply in paragraph (d), and provides guidance regarding continuation-in-part applications in paragraph (e). Applicant therefore notes that these sections supplement a duty which is defined by 37 CFR § 1.56(a). Since the typographical error in the Declaration is minor and the Declaration acknowledges Applicant's duty to disclose, Applicant requests that the Examiner waive the requirement of a substitute Declaration.

The Examiner rejected claims 1, 3, and 4 under 35 U.S.C. § 101 as claiming the same invention as that of claims 6, 7, 11, and 12 of prior U.S. Patent No. 5,815,718; rejected claim 2 under 35 U.S.C. § 101 as claiming substantially the same invention as that of claims 1-3 of prior U.S. Patent No. 5,815,718. With respect to these rejections of claims 1-4 under 35 U.S.C. § 101, Applicant notes that claims 1-4 were canceled in the Preliminary Amendment filed concurrently with the present application. Accordingly, the rejections of claims 1-4 under 35 U.S.C. § 101 are moot.

Applicant respectfully traverses the rejection of claims 5-11 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-7 of prior U.S. Patent No. 6,223,346. In making the rejection, the Examiner contends that claims 1-7 of U.S. Patent No. 5,966,542 disclose substantially the same limitations of Applicant's claims 5-11. Since U.S. Patent No. 5,966,542 includes only 6 claims, and not 7, it appears that the Examiner's indication of this patent on page 5 of the Office Action was a typographical error. Applicant therefore proceeds under the assumption that the Examiner intended to reject claims 5-11 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-7 of prior U.S. Patent No. 6,223,346, as indicated in paragraph 7 of the Office Action.

Applicant traverses the rejection because the Examiner has not demonstrated that claim 5 of the present application claims the same invention as that of U.S. Patent No. 6,223,346. As shown below, the invention of claim 5 of the present application is broader than that of the invention of claim 1 of U.S. Patent No. 6,223,346. The additional subject matter recited in claim 1 of U.S. Patent No. 6,223,346 is indicated by underline in the following:

U.S. Patent Application No. 09/840,733	U.S. Patent No. 6,223,346
5. A computer program product, for use in conjunction with a computer system, the computer program product comprising a computer readable storage medium and a computer program mechanism embedded therein, the computer program mechanism comprising: a preloaded module that includes data and at least one method that includes a plurality of instructions; wherein the preloaded module is partitioned into a first submodule and a second submodule,	1. A computer program product, for use in conjunction with a computer system, the computer program product comprising a computer readable storage medium and a computer program mechanism embedded therein, the computer program mechanism comprising: a preloaded module that includes data and at least one method that includes a plurality of instructions, <u>a subset of the instructions including references to computer accessible methods</u> ; wherein the

each submodule including a plurality of instructions and data, the second submodule having a subset of the instructions and a subset of the data, the subset of instructions and subset of data including instructions and data that are modifiable during execution of the plurality of instructions; and an initialization module that, upon initialization of the computer system, stores the second submodule in a read and write-enabled random access memory device within the computer system.	preloaded module is partitioned into a first submodule and a second submodule, each submodule including a plurality of instructions and data, the second submodule having a subset of the instructions and a subset of the data, the subset of instructions and subset of data including instructions and data that are modifiable during execution of the plurality of instructions; and an initialization module that, upon initialization of the computer system, stores the second submodule in a read and write-enabled random access memory device within the computer system.
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As indicated by MPEP § 804, the term "same invention," means an invention drawn to identical subject matter. Furthermore, if there is an embodiment of the invention that falls within the scope of one claim, but not the other, then identical subject matter is not defined by both claims and statutory double patenting would not exist. See MPEP § 804. As indicated above, claim 1 of U.S. Patent No. 6,223,346 includes an additional recitation of "a subset of the instructions including references to computer accessible methods." Accordingly, claim 5 of the present application is broader than, and does not necessarily fall within, the scope of claim 1 of U.S. Patent No. 6,223,346. Therefore, statutory double patenting does not exist and the Examiner should withdraw the rejection under 35 U.S.C. § 101 with respect to claims 5-11.

### **CONCLUSION**

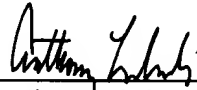
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: October 14, 2005

By:   
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